

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 36 of 1997

with

CIVIL REVISION APPLICATION NO.518 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

SHETTY TOOLS PVT.LTD.

Versus

ORCHEM INDUSTRIES

in Civil Revision Application No. 36 of 1997

ORCHEM INDUSTRIES

versus

POTASSIUM PRODUCTS (I) PVT.LTD. & ANR.

in Civil Revision Application No.518 of 1997

Appearance:

MR MC BHATT for Petitioner

MR AR MAJMUDAR for Respondent No. 1

MR BT RAO for Respondent No. 2

in Civil Revision Application No.36 of 1997

Mr.AR MAJMUDAR for Petitioner

Mr.BT RAO for respondent No.1

Mr.MC BHATT for respondent No.2

in Civil Revision Application No.518 of 1997

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 22/04/97

ORAL COMMON JUDGEMENT

Rule. Service of Rule waived by the learned Advocates appearing for the other side in both these revision applications. By consent of the learned Advocates both the matters are taken up for final disposal today itself.

2. Orchem Industries has filed Regular Civil Suit No.149 of 1996 in the Court of Small Causes Judge at Vadodara. Injunction Application Ex.5 was moved in the said Suit and the learned trial Judge by his order dated 17th June 1996 dismissed the said application with cost and vacated the status-quo. Orchem Industries carried the matter in Civil Miscellaneous Appeal No.200 of 1996 in the Court of learned 4th Extra Assistant Judge, Vadodara, who by his order dated 2nd November 1996 disposed of the Appeal. Both the parties have been aggrieved with the said order rendered by the Appellate Court. The order would read as under :

"Present Misc. Civil appeal preferred by the Orchem Industries, Vadodara being aggrieved and dis-satisfied with the judgment and order passed by the learned trial judge below Ex.5 in RCS 149/1996 dated 17.6.1996 is hereby dismissed.

However, resp.No.2 is hereby directed not to interfere with the machineries belonging to the appellant which have been mentioned in plaint para 3 and he is further directed not to remove or dispose off these machineries from the suit premises till disposal of the suit.

The appellant is at liberty to get the machineries inspected through the court commissioner appointing in the matter whenever he feels so necessary."

3. It might be noticed that in so far as dismissal of the injunction application is concerned there clearly appear to be concurrent findings with regard to prima facie case and hardship. However, Shetty Tools Pvt.Ltd. being respondent No.2 in the aforesaid appeal, has been directed not to interfere with the machineries belonging to the aforesaid Orchem Industries (plaintiff in the Suit) which have been mentioned in Para : 3 of the

plaint and not to remove or dispose of the said machineries from the Suit premises till the disposal of the Suit. The grievance with regard to such direction is two fold, firstly the learned Appellate Judge having dismissed the appeal could not have issued direction against the said respondent No.2 and secondly on account of such direction the respondent No.2 has not been able to carry on the business.

4. Having heard the learned Advocates for the parties, I am of the opinion that while exercising the revisional jurisdiction of this Court it would not be possible to interfere with the concurrent findings with regard to prima facie case and the hardship rendered by the Courts below in the facts of the present case. However, it is not in dispute that there are certain machineries which are enlisted in the Commissioner's report and there is a dispute with regard to title to such machineries. According to the plaintiff - Orchem Industries the said machineries belong to the plaintiff. In order to protect the machineries the learned Appellate Judge has given direction as aforesaid. It is also not in dispute that such machineries can be removed without damage and can be placed/stored at some secured place in the factory premises. Hence it would be just and proper if following direction is issued so as to replace the direction given by the learned Appellate Judge as noted hereinabove.

The respondent No.2 in the Appeal proceeding Shetty Tools Pvt. Ltd. is hereby permitted to remove the machineries and place them or store them at some secured place in the factory premises at their own cost and shall not remove or dispose of the same from the said factory premises till the disposal of the Suit. The rights of the parties including the right to claim compensation qua the machineries are preserved. Subject to aforesaid modification the order passed by the Appellate Court shall stand. The aforesaid Suit is directed to be heard and disposed of as expeditiously as possible, preferably within a period of six months from the date of receipt of the writ of this direction. It will be open to the plaintiff to move appropriate application before the learned trial Judge for the purpose of inspection of disputed machineries as and when the plaintiff finds it necessary to do so. Such an application will be decided by the learned trial Judge strictly on merits in accordance with law and after hearing the parties and without being influenced by the orders passed on Ex.5.

Subject to aforesaid modification Rule shall
stand discharged in both the revision Applications. No
order as to costs.

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